

1 George F. Ogilvie III (NSBN #3552)
 2 Amanda C. Yen (NSBN #9726)
 3 McDONALD CARANO LLP
 4 2300 W. Sahara Ave, Suite 1200
 5 Las Vegas, NV 89102
 6 Telephone: 702.873.4100
 7 Fax: 702.873.9966
 8 gogilvie@mcdonaldcarano.com
 9 ayen@mcdonaldcarano.com

10 Steven L. Procaccini (*Pro Hac Vice To Be Submitted*)
 11 Chris Ellis Jr. (*Pro Hac Vice To Be Submitted*)
 12 NISSENBAUM LAW GROUP, LLC
 13 2400 Morris Avenue, Suite 301
 14 Union, NJ 07083
 15 Telephone: 908-686-8000
 16 Fax: 908-686-8550
 17 sp@gdnlaw.com
 18 ce@gdnlaw.com

19 *Attorneys for plaintiff Todd VanDeHey*

20 **UNITED STATES DISTRICT COURT**

21 **DISTRICT OF NEVADA**

22 TODD VANDEHEY, an individual,

23 Plaintiff,

24 v.

25 REAL SOCIAL DYNAMICS, INC., a Nevada
 26 corporation; NICHOLAS KHO, an individual;
 27 OWEN COOK, an individual,

28 Defendants.

CASE NO.: 2:17-cv-02230 –JAD-NJK

Hon. Jennifer A. Dorsey

**SUPPLEMENTAL DECLARATION OF
 TODD VANDEHEY IN SUPPORT OF
 EMERGENCY MOTION FOR A
 TEMPORARY RESTRAINING ORDER
 AND PRELIMINARY INJUNCTION**

I, TODD VANDEHEY, declare as follows:

1. As per the agreement of the two owners of Valentine Life—Real Social Dynamics, Inc. (“RSD”) and me—I was originally appointed the incorporator, sole authorized director and fifty-percent (50%) shareholder of Valentine Life, Inc. (“Valentine Life”). I am also the plaintiff in the above-captioned matter.

2. . .

1 2. This declaration is made of my own personal knowledge except where stated on
 2 information and belief. As to those matters, I believe them to be true, and, if called as a witness, I
 3 would competently testify thereto.

4 3. I submit this declaration in supplemental support of my Emergency Motion for a
 5 Temporary Restraining Order and Preliminary Injunction (“Emergency Motion”).

6 **Background**

7 4. On or about August 22, 2017, I filed a Verified Complaint and the Emergency
 8 Motion. ECF Nos. 1 and 7.

9 5. The documentation originally filed with the Secretary of State listed me as the
 10 sole person occupying all four roles for Valentine Life (President, Secretary, Treasurer and
 11 Director). By agreement of RSD and me, neither Defendants Cook nor Kho were listed as
 12 occupying any of those positions. *See* ECF No. 1, Exhibit A.

13 6. Since I filed the Verified Complaint and Emergency Motion, I have learned that
 14 Defendant Nicholas Kho (“Mr. Kho”), one of the two owners/principals of RSD, has engaged in
 15 additional unauthorized and *ultra vires* acts to the detriment of Valentine Life and me that
 16 constitute another compelling reason that an injunction returning Valentine Life to the *status quo*
 17 *ante* should be entered.

18 **The Wrongful Acts**

19 7. The most troubling of these acts is that documentation was submitted to the
 20 Secretary of State of Nevada that improperly and illegally:

- 21 a. changed Valentine Life’s registered agent;
- 22 b. amended the person holding the offices of President, Secretary, Treasurer and
 Director of Valentine Life from me to Mr. Kho; and
- 23 c. dissolved Valentine Life.

25 8. Those documents were submitted without my authorization or consent.

26 9. With respect to the documentation changing Valentine Life’s officers and director
 27 and dissolving Valentine Life, Mr. Kho executed and submitted those forms without my
 28 authorization and in derogation of his legal and fiduciary duties.

1 10. The reason this was not set forth in my initial Emergency Motion papers is that I
 2 only obtained the underlying documents from the Secretary of State on August 31, 2017.

3 11. The fact that these documents were submitted to the Secretary of State is
 4 wrongful for a number of reasons.

5 **The Forgery**

6 12. First, the Statement of Change of Registered Agent submitted to the Secretary of
 7 State on March 10, 2017 is a forgery. A true and accurate copy of the Statement of Change of
 8 Registered Agent is attached hereto as **Exhibit O**.¹

9 13. I did not sign that document, nor authorize any person to execute the document on
 10 my behalf. Indeed, the signature and date that appears on the document is not my handwriting.

11 14. As the sole authorized President, Treasurer, Secretary and Director of Valentine
 12 Life, no other person had authority to execute and file the document.

13 **The Wrongful Filing with the Secretary of State**

14 15. Second, Mr. Kho improperly and illegally supplanted me by submitting an
 15 amendment naming him to the positions of President, Treasurer, Secretary and Director without
 16 the authorization to do so. Indeed, Mr. Kho did not even give me advance notice that he would
 17 be submitting such a document. A true and accurate copy of the Amended List submitted by Mr.
 18 Kho is attached hereto as **Exhibit P**.

19 16. I respectfully ask the Court to review the bottom of the document he executed and
 20 submitted which states just above the signature line that the person executing it swears that the
 21 information is correct and not false: *to wit*, “I declare, to the best of my knowledge under penalty
 22 of perjury, that the information contained herein is correct and acknowledge that pursuant to
 23 NRS 239.330, it is a category C felony to knowingly offer any false or forged instrument for
 24 filing in the Office of the Secretary of State.”

25 ...
 26 ...
 27

28 ¹ For ease of reference, the exhibit letters in this Declaration start directly after the last
 letter of the exhibits attached to the Verified Complaint.

1 **The Wrongful Dissolution of Valentine Life**

2 17. Third, to add insult to injury, just two days after Mr. Kho submitted the document
3 improperly supplanting me from those roles, he submitted a second document with the Secretary
4 of State dissolving Valentine Life completely. A true and accurate copy of the Valentine Life
5 Certificate of Dissolution is attached hereto as **Exhibit Q**.

6 18. That is a direct breach of the Valentine Life operating agreement which expressly
7 prohibits RSD from dissolving Valentine Life, to wit “RSD may not do or permit to be done any
8 of the following without the unanimous written consent of the Shareholders...[v]oluntarily cause
9 the dissolution of the Company”. ECF No. 1, ¶ 20, Exhibit B.

10 19. I also did not provide my consent to dissolve Valentine Life, nor was there a
11 resolution approving the dissolution of Valentine Life. Therefore, Mr. Kho’s dissolution of the
12 company was likewise improper and unauthorized.

13 20. Indeed, any resolution that Mr. Kho executed and/or approved to dissolve the
14 company—even if he were authorized to do so, which he was not—would be invalid as he was
15 not duly elected to a director position or appointed to be an officer of Valentine Life.

16 **The Need for Equitable Relief**

17 21. Clearly, Defendants have exceeded their authority and caused irreparable harm to
18 me. Valentine Life, the company of which I own fifty percent (50%), obviously cannot continue
19 in business if it has been unilaterally dissolved by a rogue person filing false documentation with
20 the Secretary of State.

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

1 22. This is yet another reason that the instant Emergency Motion which seeks a return
2 to the *status quo ante* as of August 10, 2017 should be granted. If the parties are going to
3 mediate/arbitrate their dispute, the business at issue must not already be improperly dissolved.
4 Defendants should not be allowed to preemptively destroy the very thing that Plaintiffs and
5 Defendants have agreed in the operating agreement to mediate about.

6

7 I declare under penalty of perjury under the laws of the United States of America that the
8 foregoing is true and correct

9

DATED: September 1, 2017

10
11 
12 Todd VanDeHey

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

McDONALD CARANO

2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on or about the 1st day of September, 2017, a true and correct copy of the foregoing **SUPPLEMENTAL DECLARATION OF TODD VANDEHEY IN SUPPORT OF EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION** was electronically filed with the Clerk of the Court by using CM/ECF service which will provide copies to all counsel of record registered to receive CM/ECF notification.

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

McDONALD & CARANO
WEST CALIFORNIA AVENUE SUITE 1000 • LAS VEGAS, NEVADA 89102

1 **INDEX OF EXHIBITS**
2

<u>Description</u>	<u>Exhibit No.</u>
Valentine Life, Inc. Statement of Change of Registered Agent	O
Valentine Life, Inc. Amended Officer and Director List	P
Valentine Life, Inc. Certificate of Dissolution	Q